

### III. REMARKS

1. Claims 1, 9, 13, 17, 20, 28 and 30 are amended. Claims 7, 18, 19, 35 and 43 are cancelled without prejudice. Claims 44-51 are new. Claims 1-6, 9-17, 20-26, 28-34, 36-42 and 44-51 are currently pending in this application.

Claims 13 and 30 have been amended to overcome the Examiner's objection.

Claims 9 and 28 have been amended to change their dependencies to overcome the Examiner's objection.

2. Claims 1-5, 10-13, 15-16, 20-24, 29-30, 32-33, 36-38 and 41 are not anticipated by Cuddy et al. (USPN 6,2446761) under 35 U.S.C. 102(e).

Independent claim 1 has been amended to recite in pertinent part, that the determining means are arranged to determine the moments at which a sudden background noise of a predetermined duration occurs, and the control means are arranged to produce a tone nonsimultaneously with the moments at which background noise occurs.

Independent claim 20 has been amended to recite in pertinent part, determining the moments at which a sudden background noise of a predetermined duration occurs and producing a tone nonsimultaneously with the moments at which background noise occurs.

Cuddy discloses a telephone with a means for automatically generating ringing tones to be heard by a user over ambient noise and in spite of any muffling environment in which the telephone may be located. The ambient noise is measured to determine its

amplitude and frequency characteristics and appropriate amplitude and frequency characteristics of ringing tones to be heard by a user over the ambient noise are calculated and generated. In Cuddy, the ringing tones are calculated by consulting a look-up table in the DSP chip's memory incorporating records relating to different possible ranges of amplitude and frequency characteristics of the ambient noise. The degree to which the ringing tones are muffled is also calculated and suitable amplitude and frequency characteristics of the ringing tones necessary to be heard by the user are generated. Cuddy does not suggest or disclose determining moments at which sudden background noise of a predetermined duration occurs and producing a tone nonsimultaneously with the moments at which the background noise occurs as claimed in claims 1 and 20 of the present application. Thus, claims 1 and 20 are not anticipated by Cuddy.

Claims 2-6, 9-16, 21-26, 28-33, 36-37, 38-40, 41, 44-45 and 48-49 should at least be allowable in view of their respective dependencies.

3. Claims 1, 2, 9, 20, 21, 28 and 40 are not anticipated by Cannon et al. (USPN 6,269257) under 35 U.S.C. 102(e).

Cannon does not disclose or suggest determining means are arranged to determine the moments at which a sudden background noise of a predetermined duration occurs, and the control means are arranged to produce a tone nonsimultaneously with the moments at which background noise occurs as recited in claim 1.

Cannon also does not disclose or suggest determining the moments at which a sudden background noise of a predetermined duration occurs and producing a tone nonsimultaneously with the moments at which background noise occurs as recited in claim 20.

Cannon discloses a telephone having a paging mechanism and an alerting mechanism in which the alerting mechanism can be adjusted to exceed the ambient noise in volume by a particular amount. Cannon also discloses that the pitch or other qualities of the alerting signal can be selected so that they do not overlap with those of the ambient noise. Cannon does not suggest or disclose determining moments at which sudden background noise of a predetermined duration occurs and producing a tone nonsimultaneously with the moments at which the background noise occurs as claimed in claims 1 and 20 of the present application. Thus, claims 1 and 20 are not anticipated by Cannon.

Claims 2-6, 9-16, 21-26, 28-33, 36-37, 38-40, 41, 44-45 and 48-49 should at least be allowable in view of their respective dependencies.

4. Claims 17-19, 34-35 and 42 are not anticipated by Makela et al. (USPN 6,501,967) under 35 U.S.C. 102(e).

Independent claim 17 has been amended to recite in pertinent part, a determining means for determining the background noise of the usage environment of the device. Claim 17 also recites in part, wherein the determining means are arranged to determine the moments at which a sudden background noise of a predetermined duration occurs, and the control means are arranged to produce a tone nonsimultaneously with the moments at which background noise occurs.

Independent claim 34 has been amended to recite in pertinent part, determining the moments at which a sudden background noise of a predetermined duration occurs and producing a tone nonsimultaneously with the moments at which background noise occurs.

Makela discloses a method for producing a ringing tone of a telephone comprising a sound generator, a memory for storing the ringing tone, a means for retrieving the ringing tone and for inputting the ringing tone into the sound generator for generating the ringing tone. Makela also discloses the information defining a ringing tone is input as characters, each character defining the pitch and duration of a tone. Makela does not disclose or suggest determining moments at which sudden background noise of a predetermined duration occurs and producing a tone nonsimultaneously with the moments at which the background noise occurs as claimed in claims 17 and 34 of the present application. Thus, claims 17 and 34 are not anticipated by Makela.

Claims 42, 46, 47, 50 and 51 should at least be allowable in view of their respective dependencies.

5. Claims 6, 25, 26 and 39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cuddy in view of Grothause (USPN 4,904,992).

Claims 14 and 31 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cuddy in view of Lilja (USPN 5,844,983).

Claims 3 and 22 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cannon in view of Lilja and Pohlmann ("Principles of Digital Audio", MacGraw-Hill Companies, Inc., 3<sup>rd</sup> ed. 1995)

Neither Cuddy, Cannon nor Makela suggest or disclose the features as recited in independent claims 1, 17, 20 and 34 of the present application. As such, their combination with each other or with Grothause, Lilja and/or Pohlmann does not disclose or suggest the features as claimed in independent claims 1, 17, 20 and 34.

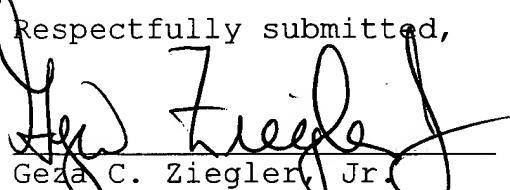
Independent claims 1, 17, 20 and 34 are not obvious over any combination of Cuddy, Cannon, Makela, Grothause, Lilja and/or Pohlmann. Accordingly, the claims dependent on claims 1, 17, 20 and 34 are not obvious over any combination of Cuddy, Cannon, Makela, Grothause, Lilja and/or Pohlmann either.

Claims 2-6, 9-16, 21-26, 28-33 and 36-42 should at least be allowable in view of their respective dependencies.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

A check in the amount of \$50.00 is enclosed for the additional claim fee. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

  
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Date

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